

# The Orissa Gazette

EXTRAORDINARY  
PUBLISHED BY AUTHORITY

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No. 1781, CUTTACK, SATURDAY, SEPTEMBER 27, 2008/ ASHWINA 5, 1930

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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 12th September, 2008

No.9793-1i/1(J)-29/2007/LE.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 24th July, 2008 in Industrial Disputes Case No. 6/2008 of the Presiding Officer, Labour Court, Jeypore to whom the Industrial Dispute between the Management of M/s. Auro Filling Station, NH-5 By-pass Road, and their Workman Shri Bama Prasanna Rath was referred for adjudication is hereby published as in the Scheduled below:—

### SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, JEYPORE,  
KORAPUT, Camp at Berhampur.

INDUSTRIAL DISPUTE CASE No. 6 OF 2008

Dated the 24th July 2008

*Present:* Shri G.K. Mishra, O.S. J.S. (Junior Branch),  
Presiding Officer,  
Labour Court, Jeypore,  
Dist-Koraput.

*Between:* Shri T. Balaji Shroff, Employer of  
M/s. Auro Filling Station N.H.-5,  
By-Pass Road, Berhampur.  
At/P.O.- Berhampur,  
Dist- Ganjam

.. First—Party Management

*Versus*

Its Workman,  
Shri Bam Prasanna Rath,  
At-Saradhabali, 4th Lane.  
P.O.-Berhampur-10  
Dist-Ganjam

.. Second—Party Workman

*Under Sections: 10 & 12 of the Industrial Disputes Act, 1947.*

*Appearances :*

<u>For the Management</u>	<u>.. None.</u>
For the Workman	.. Self.
Date of Argument	.. 24-07-2008.
Date of Award	.. 24-07-2008.

1. The Government of Orissa in the Labour & Employment Department in exercise of the power conferred upon them under sub-section (5) of Section 12 read with clause (d) of sub-section (1) of Section (10) of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes vide their Order No. 4567 (5), dated the 16th April, 2008 for adjudication of the following disputes:—

#### **SCHEDULE**

“Whether the termination of services of Shri B.P. Rath by the Management of M/s. Auro Filling Station N.H.-5, By pass Road, Berhampur with effect from 22nd September 2005 is legal and/or justified ? If not, what relief Shri Rath is entitled to ?”

#### **AWARD**

2. This case seems to have been originated out of the reference submitted by the Government for determination of an Issue regarding the illegality and unjustifiability of the termination effected in respect of the Workman by the Management coupled with any other relief to be granted in consequence of such determination.

3. The Workman was initially appointed as a Manager on 20th March 2002 and continued as such till 21st September 2005 for a consolidated sum of Rs. 1500/- per month. The Second Party Workman without any sufficient cause was removed from the Service on 22nd September 2005 which necessitated the grievance on the part of the Workman for seeking relief from the Court by Challenging the propriety and illegality of the termination.

4. The Management having not entered his appears inspite of due opportunity being given to participate in the proceeding, the case was set *ex parte* and during *ex parte* hearing the Workman seems to have unfolded the facts giving detailed account of it, regarding the status of his employment and the circumstances under which he was removed from the service. There appears no material that the Second Party Workman was temporarily appointed under the Management or worked in the circumstances with stipulations or conditions restricting his employment. The employment acquired by him may be considered to be permanent in nature, the employee once acquired to the right to work, his right to livelihood is almost secured. The right to work has got no meaning

without right to livelihood. Right to work though not declared as a fundamental right but he can not be deprived of such right without due procedure established by the law. For that matter, the Industrial Disputes Act, 1947 gives protection to the employees for safeguarding the right to livelihood which is concomitant to the right to work. The arbitrary action of the employer is checked by in-corporating fundamental provision in the relevant Act. It is a mandate that before resorting to any act of terminating any employee from the service he is to provide notice to the concerned Workman intimating his intention of such termination. Apart from that he is to pay one month's notice pay or any compensation adequate befitting to the loss of service. There is no material to show that the Management has complied the mandatory provision of the law before driving out the Workman from the service. The non-compliance on that score gives un-doubted inference about the illegal act entertained by the First Party Management. The Management having not complied the provision of the law before terminating his service, the termination of the Second Party Workman is considered to be illegal and inoperative in law. Due to such illegal act and the fault of the Management, the Workman is entitled to reinstatement in the service with full back wages. Issues are answered accordingly.

#### **ORDER**

**5.** The Award is passed. The Management is directed to reinstatement in the service with full back wages.

Dictated and Corrected by me.

G.K. Mishra, O.S. J.S. (Junior Branch),  
Dt. 24-07-2008  
Presiding Officer,  
Labour Court, Jeypore,  
Koraput.

G.K. Mishra, O.S. J.S. (Junior Branch),  
Dt. 24-07-2008  
Presiding Officer,  
Labour Court, Jeypore,  
Koraput.

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By order of the Governor

K.C. BASKE

Under-Secretary to Government